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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 SHAWN DAMON BARTH,
12 Plaintiff,

13 v.

14 BEARD, et al.,

15 Defendants.
16

Case No.: CV 16-1469-DMG (RAO)

**ORDER DENYING REQUEST FOR
PRELIMINARY AND
PERMANENT INJUNCTION [69]**

17 On June 5, 2018, Plaintiff Shawn Damon Barth (“Plaintiff”), a California
18 state prisoner proceeding *pro se*, constructively filed a Request for Preliminary and
19 Permanent Injunction (“Request”). [Doc. # 69.] Plaintiff requests an injunction
20 prohibiting Defendants¹ from holding, keeping, or stopping his incoming and
21 outgoing mail at California State Prison in Lancaster, California. (*Id.* at 1.)
22 Plaintiff also requests that correctional officers and mailroom staff be prohibited
23 from opening, obstructing, and returning his mail. (*Id.* at 1-2.) Plaintiff
24 additionally states that his rights to due process and to access the courts are

25 ¹ Plaintiff’s most recent amended complaint names as Defendants a deputy district attorney,
26 a police detective, Plaintiff’s appointed attorney in his state criminal prosecution, a correctional
27 officer, the former Secretary of the California Department of Corrections and Rehabilitation, and
28 a labor union for California correctional officers. [See Doc. # 65.] The Court presumes that
Plaintiff’s Request seeks to enjoin only the named defendants who are prison officials at
California State Prison.

1 obstructed. (*Id.* at 2.) Because the Request is premature, the Court is without
2 authority to grant the relief requested.


3 “A preliminary injunction is an extraordinary remedy never awarded as of
4 right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24, 129 S. Ct. 365, 376,
5 172 L. Ed. 2d 249 (2008). In seeking preliminary injunctive relief, the movant
6 must establish that: (1) he is likely to succeed on the merits of his claims; (2) he is
7 likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance
8 of hardships tips in his favor; and (4) a preliminary injunction is in the public
9 interest. *Id.* at 20.

10 A federal court must also have jurisdiction over the parties that the movant
11 seeks to enjoin. *Zepeda v. United States I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983).
12 The Court may not attempt to determine the rights of those who are not before it.
13 *Id.* An injunction binds only the parties to the action, their officers, agents,
14 servants, employees, and attorneys, and other persons in active concert or
15 participation with them. Fed. R. Civ. P. 65(d)(2).

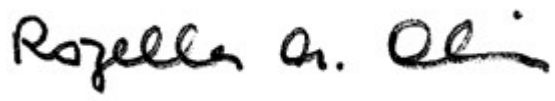
16 The Court cannot exercise jurisdiction over Defendants at this time.
17 Plaintiff’s Second Amended Complaint (“SAC”) has not yet been screened in
18 accordance with 28 U.S.C. §§ 1915(e)(2), 1915A(a), to determine whether it states
19 cognizable claims. The Court therefore has not ordered service of the SAC, and
20 none of the Defendants have been served or appeared in this action. Accordingly,
21 the Court does not have jurisdiction over Defendants. *See Jackson v. Hayakawa*,
22 682 F.2d 1344, 1347 (9th Cir. 1982) (“Defendants must be served in accordance
23 with Rule 4[] of the Federal Rules of Civil Procedure, or there is no personal
24 jurisdiction. . . . Neither actual notice nor simply naming the person in the caption
25 of the complaint will subject defendants to personal jurisdiction if service was not
26 made in substantial compliance with Rule 4.” (internal citations and footnote
27 omitted)). Without jurisdiction over Defendants, the Court lacks the authority to
28 enjoin Defendants’ conduct. *See Zepeda*, 753 F.2d at 727.

1 Based on the foregoing, IT IS ORDERED THAT Plaintiff's Request is
2 DENIED WITHOUT PREJUDICE.

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4 DATED: June 27, 2018

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6 DOLLY M. GEE
7 UNITED STATES DISTRICT JUDGE

8 Presented by:

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11 ROZELLA A. OLIVER
12 UNITED STATES MAGISTRATE JUDGE
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